IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.27 OF 2006

IN

SUMMARY SUIT NO.1595 OF 2005

...

Ritu Sethi ...Plaintiff

v/s.

Jayantilal Khandwala & Sons ...Defendant

...

Mr.Sanjay Jain i/b S.K.Srivastava & Co. for the Plaintiff.

Mr.Vivek Kantawala with Mr.V.M.Sharma for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 31ST JULY, 2006

P.C.:

1. The Plaintiff has filed this suit on the basis of a cheque which admittedly has been issued by the Defendant and the letter alongwith which the cheque was sent.

2. The Defendant does not dispute the letter dated 8-2-2002 and also does not dispute that the Defendant has signed the cheque. The Plaintiff has averred in paragraph 13 of the plaint that the Defendant has acknowledged his liability to the Plaintiff in his income-tax returns filed for the financial year 2003-2004. The Defendant went to the extent of making false statement on oath and denied that he showed the liability in his income-tax returns. Therefore, the Plaintiff produced a copy of the return alongwith rejoinder. Despite this position, the advocate appearing for the Defendant argued before me that the reference to the income-tax returns was for the first time made in the rejoinder. In fact in paragraph 13 of the plaint, the Plaintiff has stated that the Defendants have acknowledged

their liability to pay the amount of Rs.15,00,000/- to the Plaintiff in their income-tax return for the year ending on 31-3-2004. Perusal of paragraph 18 of the reply filed on behalf of the Defendants, wherein the Defendants have replied paragraph 13 of the plaint shows that the Defendants flatly denied that they have acknowledged their liability to the Plaintiff in their income-tax returns. The Plaintiff, therefore, secured certified copy of the income-tax returns of the Defendants and produced it with the rejoinder. After this rejoinder was filed and the certified copy of the income-tax return was produced, the Defendants have not denied that the certified copy produced with the rejoinder is not their income-tax return. It is, thus, clear that the Defendants have made a palpably false statement on oath in the reply.

3. Perusal of the affidavit filed in reply shows that though the letter accompanying the cheque is admitted, an attempt is made to raise a defence without producing any document. The Defendants have not produced a single document in support of the defence that they have tried to raise. In fact, the Defendants do not have any defence to offer. This

shows only one thing that the Defendant is desperate to avoid the liability. By raising frivolous defence and making false statement on oath, the Defendant has also wasted the court's time.

4. In these circumstances, therefore, in my opinion, following order would meet the ends of justice.

O R D E R

(i) Summons for judgment is granted. The suit of the Plaintiff is decreed in terms of prayer clause of the suit.

(ii) Looking to the conduct of the Defendant exemplary costs are to be imposed on the Defendant. The Defendant is, therefore, directed to pay Rs.50,000/- as costs of this suit to the Plaintiff. Amount of costs to be paid to the Plaintiff within three weeks from today.

(iii) Refund of court fees as per rules.

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